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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91237315
Party	Plaintiff American Marriage Ministries
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Submission	Motion to Quash
Filer's Name	Nancy V. Stephens
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Signature	/Nancy V. Stephens/
Date	11/13/2018
Attachments	Final NVS Declaration in Support of Motion to Quash.pdf(42698 bytes) OPPOSERS MOTION TO QUASH DEPOSITIONS OF DYLAN WALL GLENN YOSpdf.pdf(51943 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

AMERICAN MARRIAGE MINISTRIES,

Opposer,

v.

UNIVERSAL LIFE CHURCH
MONASTERY STOREHOUSE, INC.

Applicant.

Opposition No. 91237315

DECLARATION OF NANCY V.
STEPHENS IN SUPPORT OF
OPPOSER'S MOTION TO QUASH THE
DEPOSITIONS OF DYLAN WALL,
GLENN YOSHIOKA AND AMERICAN
MARRIAGE MINISTRIES

I, NANCY V. STEPHENS, hereby declare as follows:

1. I am a Member of Foster Pepper, PLLC, counsel to American Marriage Ministries. I am a member in good standing with the Washington State Bar. I submit this Declaration in support of Opposer's Motion to Quash the Depositions of Dylan Wall, Glenn Yoshioka and American Marriage Ministries.

2. Notices of Deposition were received on November 5, 2018 noticing depositions November 14 – 16, 2018, the final days of the discovery period.

3. Since November 5, 2018, the parties have contemplated a stipulated extension of discovery to extend the discovery period to at least as late as December 21, 2018.

4. Upon receiving Notices of Deposition on November 5, 2018, I have exchanged correspondence with my client to find a suitable time to depose Applicant and be deposed.

5. Opposer is unavailable November 14-16, 2018. Dylan Wall has a prior commitment and Glenn Yoshioka is unavailable due to health reasons which can be substantiated.

6. Given the dates of the first two weeks of December were proposed by Applicant as suitable, these dates were discussed with my clients.

7. My client agreed that the dates of the first weeks in December would be suitable. No final date was reached.

8. On November 12, 2018 Applicant's counsel clarified he would not stipulate to a mutual extension of discovery and the originally noticed dates would stand though we had previously indicated the dates were not available.

9. As the final days of discovery were the dates noticed, the only other options were November 12th and November 13th which were unavailable due to time constraints.

10. Opposing counsel seeks to extend discovery only for his client to take depositions and will not stipulate to an extension of discovery for both parties to the Opposition.

I declare under penalty of perjury under the laws of the state of Washington and the United States that the foregoing is true and correct.

DATED: November 13, 2018

/Nancy V. Stephens/
Nancy V. Stephens WSBA No. 31510
Foster Pepper PLLC
Attorneys for Opposer
1111 Third Avenue, Suite 3200
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206-447-4400

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2018, I served the foregoing **DECLARATION OF NANCY V. STEPHENS IN SUPPORT OF OPPOSER'S MOTION TO QUASH THE DEPOSITIONS OF DYLAN WALL, GLENN YOSHIOKA AND AMERICAN MARRIAGE MINISTRIES** on the Applicant by emailing to Applicant as follows:

Michael P. Matesky, II
Matesky Law PLLC
trademarks@mateskylaw.com
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/Renee Stewart/

Renee Stewart

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OPPOSER'S MOTION TO QUASH
DEPOSITIONS OF DYLAN WALL,
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INTRODUCTION

Opposer, Universal Marriage Ministries, seeks an order quashing the depositions of Dylan Wall, Glenn Yoshioka and American Marriage Ministries noted by Applicant, Universal Life Church Monastery Storehouse, Inc.

STATEMENT OF RELEVANT FACTS

Discovery in the above matter closes on November 16, 2016. On November 5, 2018, Opposer served a Notice of Deposition of Dylan Wall to take place on November 14, 2018, a Notice of Deposition of Glenn Yoshioka to take place on November 15, 2018 and Notice of Deposition of American Marriage Ministries to take place on November 16, 2018. On the same date the Notice of Depositions were served on Opposer (November 5, 2018), Applicant's counsel suggested the parties stipulate to extend discovery until December 21, 2018 to accommodate

schedules and take depositions the first two weeks of December, beyond the Thanksgiving holiday. In a telephone conversation sometime between November 5th and November 6th, Opposer's counsel confirmed that Dylan Wall and Glenn Yoshioka would be unavailable from November 14–16, 2018 and originally believed counsel would also be unavailable. Opposer's counsel also confirmed deponent would be available either the first or second week of December (dates originally suggested by Applicant's counsel as possible alternative dates). Opposer agreed to the discovery extension but suggested the extension run through the end of the year to December 31, 2018. Applicant's counsel would not agree.

On Saturday November 10, 2018 (read for the first time on the following business day Monday November 12, 2018), counsel for Applicant wrote counsel for Opposer to inform and clarify that the only reason Applicant proposed the extension of discovery was for the sole purpose of taking Opposer's depositions but the extension would not apply to both parties. Further, Applicant stated that if Opposer did not stipulate to the extension of discovery for this limited purpose, the dates of the original notice would stand.

On Monday November 12, 2018, Opposer's counsel again informed Applicant's counsel that neither Opposer nor Opposer's employees would not be available on Wednesday, November 14, 2018, Thursday, November 15, 2018 or Friday, November 16, 2018 and suggested the parties stipulate to extend discovery until December 21st, pursuant to Applicant's counsel's originally suggested extension date, to accommodate both parties. Applicant's counsel refused to agree unless the discovery extension only applied to Applicant.

ARGUMENT

Opposer moves to quash the notice of deposition on the grounds that there was not reasonable notice in writing of the proposed deposition. While as little as 2 days notice has been deemed reasonable, on the facts in this case it is not.

From the day the Notices of Deposition were sent on November 5, 2018 until November 12, 2018 Opposer has operated under the belief that the parties would cooperate and stipulate to an extension of the discovery to accommodate depositions. The first proposal of a stipulated extension was made by Applicant's counsel on the same day the notices were served. Alternative dates were proposed and discussed and cleared with clients. On November 12, 2018, Applicant's counsel clarified Applicant would not consent to an extension of discovery if it applied to both sides and that the originally noted dates stood. Given the deponents had previously communicated they were unavailable November 14 – 16, when notified on November 12, 2018 that the original dates stood, nothing had changed and the deponents were still unavailable due to prior commitments (Dylan Wall) and health reasons (Glenn Yoshioka).

Opposer's counsel was not contacted prior to November 5, 2018 in order to arrange a mutually convenient time for the deposition to occur. The parties spoke on October 25th but Opposer's counsel has no recollection of being permitted time to consult with clients regarding acceptable dates prior to receiving the November 5th notice. Given alternate dates were proposed at the time notice was served, when it was determined deponents were unavailable for the noticed dates, the alternate dates were discussed and calendared by deponents. It was only on November 12th that Opposer was made aware the originally noticed dates would be in effect, dates Opposer had already informed Applicant's counsel that deponents were unavailable.

On the facts and circumstances of this case, there was not reasonable notice of the proposed deposition. While originally noticed on November 5, 2018, conversations and representations indicated the discovery period would be extended by mutual agreement. The understanding that alternate dates would not apply because Applicant's counsel would not stipulate to the mutual extension of discovery only came on November 12, 2018, two days before the first scheduled deposition. In addition to the unavailability of deponents for reasons of a prior commitment and health, at this stage there is no time to adequately prepare for the depositions.

Opposer's strategy of waiting until the end of the discovery period to notice depositions, understanding and even expecting deponents would be unavailable and suggesting discovery be extended but only for the sole purpose of Applicant deposing Opposer, is not within the spirit of fairness or cooperation encouraged by the Board. The discovery period in this case originally opened December 27, 2017 though it was suspended by the Board from April 23, 2018 through August 14, 2018. If Applicant intended to take discovery depositions, there was time to have raised or discussed this with counsel prior to the last weeks of the reset discovery period and time to arrange a convenient time for both parties. When the first dates proposed were deemed unacceptable, there was no time remaining in the discovery period to schedule alternate dates as proposed dates were the final dates of the discovery period. The closing of a party's discovery period does not constitute a compelling need for failing to provide reasonable notice of deposition. *Gaudreau v. American Promotional Events Inc.*, 82 USPQ2d 1692, 1696 (TTAB 2007).

CONCLUSION

For the foregoing reasons, Opposer respectfully requests the Trademark Trial and Appeals Board to quash the depositions of Dylan Wall, Glenn Yoshioka and American Marriage Ministries.

DATED: November 13, 2018

/Nancy V. Stephens/
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CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2018, I served the foregoing **OPPOSER'S MOTION TO QUASH DEPOSITIONS OF DYLAN WALL, GLENN YOSHIOKA AND AMERICAN MARRIAGE MINISTRIES** on the Applicant by emailing to Applicant as follows:

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/Renee Stewart/

Renee Stewart